








## Trauma-informed sentencing of serious violent offenders: an exploration of judicial dispositions with a gendered perspective

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Experience of psychological trauma is correlated with violent offending, with exposure reported for most offenders entering the criminal justice system. The practice of trauma-informed sentencing recognises this complex and consistent relationship, and endeavours to respond in a way that avoids re-traumatisation and reduces harm to offenders and victims. Trauma-informed approaches to offenders improve safety in custodial settings, enhance prospects of correctional rehabilitation and recovery from mental illness and promote the health and welfare of staff working with offenders. This quantitative pilot study examines the identification and impact of trauma – as recorded in sentencing decisions – for homicide perpetrators in Victoria, with particular attention to trauma-informed sentencing and whether or not gender makes a difference. Traumatic experiences were described in a high proportion of cases but only explicitly recognised in a minority. Trauma-informed sentencing recommendations were rare. Collaboration between clinical and legal professionals to inform and enhance trauma-informed procedures is recommended.

**Keywords:** trauma-informed sentencing; complex trauma; homicide offenders; gendered sentencing.

Trauma is ubiquitous in criminal justice settings, with some research finding that over 90% of incarcerated offenders have experienced trauma and up to 20% are diagnosed with post-traumatic stress disorder (PTSD; Abram et al., 2013; Goff et al., 2007). There are gendered differences in these observations and judicial disposition. As trauma is linked to both offending and mental illness, a growing body of research over the last decade has called for a more trauma-informed approach to managing offenders. Trauma-informed justice is an approach which seeks to integrate

experiences of trauma into our understanding of offending and provide a pathway for reducing further harm to both the offender and the community. The current study seeks to explore the extent to which trauma-informed justice is understood and practised in Victorian courts, through the exploration of sentencing.

### Background

#### Definition of trauma

Since the introduction of PTSD into the *Diagnostic and Statistical Manual of Mental*

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*Disorders, Third Edition (DSM-III*; American Psychiatric Association, 1980), judicial and psychiatric perspectives on trauma have often diverged (Tennant, 2004). Psychiatric descriptions of *trauma* vary, ranging from distinct ‘uncontrollable, terrifying life events’ (Van der Kolk, 2003, p. 1) – described within Criterion A of the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5*; American Psychiatric Association, 2013) as potentiating development of PTSD – to the emotional and physiological consequences of repeated or prolonged exposure to such stimuli, also known as complex or developmental trauma (Kilpatrick et al., 2013; Randall & Haskell, 2013; Tennant, 2004; Van der Kolk, 2003; Vitopoulos et al., 2019; Widom, 1989). Differences in the operationalisation of trauma have posed challenges in determining the relationship between trauma, mental illness and offending – particularly violent offending (Carr et al., 2013; Zelechowski, 2016).

### ***Trauma, offending and the criminal justice system***

Childhood experiences of trauma, whether or not they lead to PTSD, have been correlated with violent offending (Aebi et al., 2015; Fonagy, 2008; Fox et al., 2015; Goff et al., 2007; Ogloff et al., 2012; Smith et al., 2005; Vitopoulos et al., 2019; Weeks & Widom, 1998; Widom, 1989; Zelechowski, 2016) and, to a lesser degree, recidivism (Aebi et al., 2015; Ardino et al., 2013; Vitopoulos et al., 2019). This may be especially true for female offenders, with violent offending being most correlated to a history of childhood sexual abuse (Howell, 2003; Kerig & Modrowski, 2018; Ogloff et al., 2012; Vitopoulos et al., 2019). Halsey (2017) observed that the criminogenic life characteristics which are disproportionately associated with trauma, such as substance abuse and community variables (e.g. lack of strong, prosocial family relationships), are a ‘surefire way to maximise recidivism’ (p. 32). Recent *gendered pathways perspective* research has posited that addressing trauma in

female offenders is central to preventing offending and recidivism (Jones et al., 2014; Kennedy et al., 2018; Salisbury & Van Voorhis, 2009).

The process of incarceration, and the prison environment itself, can be traumatic or re-traumatising for offenders (Maschi et al., 2011; Miller & Najavits, 2012; Moloney et al., 2009), particularly for female offenders (Askew, 2012; Breen, 2017; Kerr & Shackel, 2018). Additionally, the perpetration of violence itself may be a traumatic stimulus for serious violent offenders, resulting in PTSD independently of other significant trauma history (Pollock, 1999). Finally, secondary traumatisation of offenders’ dependent children has also been identified as an important sentencing consideration to reduce additional harm, with lack of acknowledgement of this impact described by some as contravening the United Nations (UN) (Convention on the Rights of the Child, 1989; Flynn et al., 2016; Millar & Dandurand, 2018; Murray & Farrington, 2008).

### ***Trauma and mental illness***

The relationship between trauma and mental illness is firmly established. A significant amount of research has correlated all types of abuse and neglect with increased risk of substance abuse, mood disorders, schizophrenia, anxiety disorders, personality disorders, disruptive behavioural disorders, eating disorders and dissociative disorders (Arseneault et al., 2000; Carr et al., 2013; Cutajar et al., 2010; Delima & Vimpani, 2011; Dembo et al., 1988; Green et al., 2016; Randall & Haskell, 2013). Unsurprisingly, trauma is strongly associated with PTSD, and PTSD rates in prison – especially for women – are extremely high compared to the general population (Friel et al., 2008; Goff et al., 2007). There is a high co-occurrence of PTSD and other psychiatric disorders, with psychiatric comorbidity described in over 90% of youth offenders with PTSD (Abram et al., 2013).

### Trauma-informed sentencing

In recognition of this relationship between trauma, offending and mental illness, the trauma-informed perspective seeks to firstly acknowledge the complex influences of past trauma on offenders (and victims) and secondly respond in a way that avoids re-traumatisation and reduces harm (Randall & Haskell, 2013). Fundamental to the concept is the explicit recognition of trauma and understanding of its salience. In the context of sentencing, this requires legal representation that adequately explores, acknowledges and represents the individualised presence and relevance of trauma to offending (Gohara, 2018; Kezelman & Stavropoulos, 2012). In Australia, defence counsel aim to obtain for their client the least punitive sanction that is available in the circumstances. They are required to draw to the judge's attention any disposition that might not ordinarily be considered and any factors that may be particularly pertinent in the circumstances which may weigh in the accused's favour, such as a medical, psychological or psychiatric history which can be supported by reports from the relevant practitioners. If a community-based order is in contemplation, a pre-sentence report may be required from correctional services, who will be supervising the offender in the community.

If relevant, specialist recommendations for evidence-based interventions should be provided to the courts, emphasising strategies to develop resilience and strengths-based approaches (Gohara, 2018; Kezelman & Stavropoulos, 2016; Randall & Haskell, 2013). A trauma-informed approach seeks to 'better attend to the fullness of the diffused effects of a traumatic incident' (Randall & Haskell, 2013, p. 505), recognising harm to offenders, their dependents, victims and professionals working in environments where trauma is prevalent. This approach is in accord with the increasingly influential theories and practices of therapeutic jurisprudence (Wexler, 2000).

### Sentencing in Victoria

In Victoria, the *Sentencing Act 1991* sets out a number of aims of sentencing including the establishment of conditions in which 'rehabilitation of the offender may be facilitated' (s. 5(1)). There are many mitigating factors that may be taken into account during sentencing, including mental disorder. In Victoria, the principles that apply when mental impairment is relevant to sentencing are articulated in the case of *R v. Verdins*, Buckley and Vo (2007; see Table 1).

The effect of trauma as a mitigating factor has been discussed by the High Court of Australia in the landmark case of *Bugmy v. R* (2013), in which the court recognised that a 'deprived or traumatic' childhood such as that of the appellant were grounds for mitigation and leniency in sentencing (para. 592–593). In order for a history of trauma to mitigate sentencing, the court must accept that the abuse occurred and establish a connection between the abuse and the current offending which diminishes the offender's moral culpability (e.g. *Bugmy v. R*, 2013; *DPP v. B W*, 2007; *R v. AWF*, 2000). In these circumstances, diminished moral culpability may mitigate the sentence on the grounds that an offender with a background of severe environmental deprivation may be less able to control their behaviour than one whose formative years were not impaired in the same way, and that the effects of profound deprivation do not diminish over time. On the other hand, although moral culpability may be reduced, an offender's inability to control their violent impulses may be grounds for a more severe sentence on the basis of community protection (*Bugmy v. R*, 2013, para. 44). As Atiq and Miller (2018) have argued, severe environmental deprivation – which may involve severe emotional, psychological and/or sexual abuse – can affect one's 'capacities for self-regulation, including impulse control and anger management', as well as one's 'capacity to think through the consequences of one's actions' (p. 181).

Table 1. The *Verdins* principles.

In *R v. Verdins* (2007), the Court of Appeal identified six ways in which mental impairment may be relevant to sentencing:

1. It may reduce an offender's moral culpability and so affect what is considered to be a just punishment and lessen the need for denunciation;
2. It may have a bearing on the kind of sentence that is imposed and the conditions under which it should be served;
3. General deterrence may be moderated or eliminated as a consideration depending on the nature and severity of the offender's symptoms, and the effect of their impairment at the time of the offending, sentence, or both;
4. Specific deterrence may be similarly moderated or eliminated in the same circumstances;
5. The existence of an impairment at the time of sentencing, or its reasonably foreseeable recurrence, may mean that a specific sentence may weigh more heavily on the offender than it would on a person in normal health;
6. If there is a serious risk that imprisonment will have a significantly adverse impact on the offender's mental health, this will be a mitigating factor.

*Note.* From *Victorian Sentencing Manual* (Judicial College of Victoria, 2020, p. 145).

### Existing research

Since their diagnostic inception, PTSD (Friel et al., 2008; Sparr, 1996) and, when present, related dissociation (Adshead & Mezey, 1997) have been applied as grounds for defences of mental impairment (insanity) or automatism, or as a mitigating factor.

Of the few gendered studies to examine the impact of trauma on sentencing for adult men, most have identified an association with harsher sentencing outcomes (Appelbaum & Scurich, 2014). Despite the theoretical research finding that exposure to childhood abuse is a strongly mitigating variable (Barnett et al., 2007), behaviours consequent to child abuse may be perceived by jurors as more controllable and stable, leading, in some cases, to the perception of past trauma as an aggravating factor (Stevenson et al., 2010). Underlying this perhaps counterintuitive finding is the opinion that such victimisation does not compromise an offender's ability to recognise wrongdoing – that is, the control they have of their behaviour – but instead presents an unmodifiable risk factor for future offending.

Women typically experience greater leniency in sentencing compared to men (Albonetti, 1991; Gelb, 2010; Goethals et al., 1997; Hedderman, 1994) and this finding

appears to be more evident for serious violent offenders (Zingraff & Thomson, 1984). However, a recent study has found that female violent offenders who are victims of child abuse and lifetime sexual abuse are given statistically longer sentences compared to non-victimised female offenders when legal variables impacting sentencing (e.g. offending history) are controlled for (Kennedy et al., 2018).

### Aims

Using a sample of serious violent offenders sentenced in the Supreme Court of Victoria over a 10-year period, this study systematically examines the sentencing transcripts to establish firstly if any traumatic experiences were acknowledged during sentencing and secondly whether or not such traumatic experiences influenced sentencing outcomes.

### Hypotheses

Three hypotheses were formed in anticipation of the study's findings:

1. Traumatic experiences are likely to be described in sentencing remarks without being explicitly acknowledged as trauma.

Table 2. The Life Events Checklist (LEC-5).

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1.	Natural disaster (for example, flood, hurricane, tornado, earthquake)
2.	Fire or explosion
3.	Transportation accident (for example, car accident, boat accident, train wreck, plane crash)
4.	Serious accident at work, home, or during recreational activity
5.	Exposure to toxic substance (for example, dangerous chemicals, radiation)
6.	Physical assault (for example, being attacked, hit, slapped, kicked, beaten up)
7.	Assault with a weapon (for example, being shot, stabbed, threatened with a knife, gun, bomb)
8.	Sexual assault (rape, attempted rape, made to perform any type of sexual act through force or threat of harm)
9.	Other unwanted or uncomfortable sexual experience
10.	Combat or exposure to a war-zone (in the military or as a civilian)
11.	Captivity (for example, being kidnapped, abducted, held hostage, prisoner of war)
12.	Life-threatening illness or injury
13.	Severe human suffering
14.	Sudden violent death (for example, homicide, suicide)
15.	Sudden accidental death
16.	Serious injury, harm, or death you caused to someone else
17.	Any other very stressful event or experience

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*Note.* From The Life Events Checklist for *DSM-5* (LEC-5; Weathers et al., 2013). Instrument available from the National Center for PTSD (see <http://www.ptsd.va.gov>).

2. Where trauma is explicitly recognised, it will be found to mitigate sentencing and therefore sentencing recommendations will be more likely to be trauma-informed.
3. There will be gendered differences for both findings, with trauma more likely to be described, recognised, mitigating and linked to trauma-informed recommendations for female offenders.

## Methodology

### Study sample

A sample of Victorian Supreme Court sentencing transcripts for murder and manslaughter convictions was selected using sentencing data obtained from the Australian Legal Information Institute (AustLII) for the period 1 January 2009 to 31 December 2018 (<http://www.austlii.edu.au/>). Given the significantly higher number of male offenders, a purposeful sampling method was utilised to ensure equal numbers of males and females. All female offenders were selected first, then matching

male offenders were sampled based on sentencing date and offending type.

Two female offenders were convicted for infanticide, a gender-specific offence, and could not be matched to male subjects. Youth offenders (those under 18 years of age) and offenders found not guilty by reason of mental impairment (Crimes [Mental Impairment and Unfitness to be Tried] Act 1997, s. 20) were excluded.

The final sample comprised 93 convicted homicide offenders (45 females, 48 males).

### Measures

#### Trauma exposure

The Life Events Checklist for *DSM-5* (LEC-5; see Table 2), a 17-item list of events associated with the development of PTSD (as per the *DSM-5*; American Psychological Association, 2013), was used to detect the different types of trauma exposure mentioned in the sentencing remarks (Gray et al., 2004; Weathers et al., 2013). The presence of items was scored from 0 to 3, where 0 = no exposure, 1 = probable exposure, 2 = a single exposure and

3 = multiple exposures. Exposure is defined as either direct or indirect (i.e. witnessed or, where explicitly stated, vicarious) experiences. An average trauma score was calculated for each of the 17 trauma items by dividing the total sum of trauma scores by the number of offenders (see the Results section for details).

### *Recognition of trauma*

Sentencing remarks were scored to determine whether or not the described trauma items were explicitly identified as 'trauma'. Recognition of trauma was scored as 0 = no, 1 = non-specific recognition or 2 = yes. A percentage recognition score was then calculated by dividing the total recognition scores per item by the maximum recognition score: e.g. if 5 offenders were exposed to Item 11 then the maximum recognition for this item would be 10; if trauma was clearly recognised for only 1 of these 5 offenders (recognition score = 2) then the percentage recognition score would be 20%.

If a diagnosis of PTSD was mentioned, this was also scored as 0 = no, 1 = post-traumatic illness other than PTSD or 2 = yes.

### *Impact of trauma on sentencing decisions*

The impact of trauma on sentencing was recorded based on its direct identification as a sentencing factor. Trauma was identified as either mitigating, aggravating, explanatory, influential of sentencing in another way or having no impact. To be mitigating, the trauma-related factor had to be clearly identified as reducing the offender's moral culpability or reducing the seriousness of the offence (Sentencing Advisory Council, 2019). Where the trauma was discussed to explain offending, but without reducing culpability or seriousness, it was identified as explanatory. In a small number of cases, trauma-related factors influenced sentencing because of the impact of trauma on the offender's experience of prison, without being either mitigating or explanatory

of the offending; these cases were identified as influential.

When assessing the impact of trauma on sentencing, Item 16 (*Serious injury, harm, or death you caused to someone else*) was excluded. This is because Item 16 refers to the offence itself and clearly cannot be considered a mitigating factor.

The sentence pronounced (in years) and the percentage of non-parole period compared to the total effective (head) sentence was also recorded. Owing to the heterogeneity of offences, sentencing duration was recorded as an overall average and as an average for each specific offence (i.e. murder, manslaughter and defensive homicide).

### *Trauma-informed recommendations*

Finally, the presence of trauma-informed recommendations was recorded. These are defined as recommendations for interventions specifically aimed at addressing trauma, and non-specific interventions which might also address trauma. Examples of specific interventions currently in practice include: the Out of the Dark programme in Victoria, which assists women who have been victimised by family violence (Victoria State Government, 2019, p. 45); the Dilly Bag programme in Victoria (p. 27), which addresses trauma experienced by Aboriginal women in custody; specific or general psychological treatments of trauma; and trauma counselling.

All data were reviewed twice to prevent omissions. Specialist colleagues in forensic psychiatry and law provided consultation to guide the analysis of ambiguous findings.

### *Data analysis*

All data were tabulated into a Microsoft Excel spreadsheet (Microsoft Corporation, 2016). Frequencies, percentages and average scores were obtained to characterise the sample and describe patterns in the data. The trauma data were transferred into SPSS (IBM Corp, 2017) v25 in order to assess gender differences.



Table 3. Sample characteristics.

	Male, <i>n</i> (%)	Female, <i>n</i> (%)
Variable	48 (51.6)	45 (48.4)
Type of charge		
Murder	20	16
Manslaughter	24	23
Defensive homicide	4	4
Infanticide	n/a	2*
Exposure to trauma		
Including item 16	48	45
Excluding item 16	41	45
PTSD diagnosis	4	14

Note. \*One of the infanticide offenders was also convicted of murder.

Due to the small sample sizes, regression and structural equation models were not sufficiently powered to derive accurate results. In line with the nature of the data collected, the analysis is largely descriptive. Where sample size allowed, inferential statistics were employed to assess for significant differences between groups. Independent *t*-tests and chi-square tests of independence were conducted to assess for significant gender differences across (1) trauma exposure scores and (2) trauma recognition scores. A number of preliminary tests were conducted to ensure that the data met assumptions, prior to conducting the independent samples *t*-test (further information is available in the [supplementary material](#)).

Results

Description of sample

The final sample comprised 93 convicted homicide offenders (45 females, 48 males). All offenders had been exposed to at least one traumatic item on the LEC-5, although 7 of the male offenders had not been exposed to trauma other than their own perpetration of violence. Less than 20% of all the offenders (*n* = 18) were diagnosed with PTSD (Table 3).

Trauma exposure

The findings for all offenders regarding exposure to the LEC-5 items are presented in Table 4. The majority of the offenders (94%,

*n* = 87) had been exposed to more than one of the 16 applicable trauma items. Just 6 offenders had only been exposed to a single trauma item, that being Item 16—the perpetration of violence. The 7th male offender with exposure to Item 16 alone was convicted of murder and had multiple exposures (i.e. he had caused serious injury or death on more than one occasion). These offenders were men convicted of manslaughter. Aside from Item 16 (*Serious injury, harm, or death you caused to someone else*), which applies to all offenders, the most commonly described trauma exposure was physical assault (*n* = 47, 50.5%), with 80% of these offenders exposed more than once (*n* = 37). Sexual assault was the second most frequently described trauma (*n* = 30, 32.3%), followed by assault with a weapon (*n* = 14, 15.1%). Most of the sample (89% of the women, 75% of the men) were exposed to Item 17 (*Any other very stressful event or experience*), as discussed further below.

The findings for each gender regarding exposure to the LEC-5 items are presented in Tables 5 and 6. Overall, the number of multiple exposures to trauma does not differ significantly between the male and female offenders ( $\chi^2 = 1.828, p > .05$ ). However, 70% of the women – compared to just over 30% of the men – were exposed to physical trauma, with average trauma scores more than double for the women. Of those exposed, a slightly higher proportion of women (81.25%)

Table 4. Trauma exposure – all offenders ( $n = 93$ ).

Event	Any exposure, $n$ (%)	Multiple exposures,		Single exposure, $n$ (%)	Probable exposure,		Average trauma score
		$n$ (%)			$n$ (%)		
Natural disaster	0 (0.0)	0 (0.0)		0 (0.0)	0 (0.0)		0.000
Fire or explosion	3 (3.2)	0 (0.0)		2 (2.2)	1 (1.1)		0.054
Transportation accident	8 (8.6)	0 (0.0)		8 (8.6)	0 (0.0)		0.172
Serious accident	4 (4.3)	0 (0.0)		2 (2.2)	2 (2.2)		0.065
Toxic substance	0 (0.0)	0 (0.0)		0 (0.0)	0 (0.0)		0.000
Physical assault	47 (50.5)	37 (39.8)		6 (6.5)	4 (4.3)		1.366
Assault with a weapon	14 (15.1)	3 (3.2)		9 (9.7)	2 (2.2)		0.312
Sexual assault	30 (32.3)	18 (19.4)		11 (11.8)	1 (1.1)		0.828
Other sexual	8 (8.6)	2 (2.2)		4 (4.3)	2 (2.2)		0.172
Combat or exposure to a war-zone	7 (7.5)	1 (1.1)		5 (5.4)	1 (1.1)		0.151
Captivity	5 (5.4)	0 (0.0)		4 (4.3)	1 (1.1)		0.097
Life-threatening illness or injury	13 (14.0)	1 (1.1)		5 (5.4)	7 (7.5)		0.215
Severe human suffering	2 (2.2)	0 (0.0)		2 (2.2)	0 (0.0)		0.043
Sudden violent death	12 (12.9)	2 (2.2)		10 (10.8)	0 (0.0)		0.280
Sudden accidental death	9 (9.7)	1 (1.1)		8 (8.6)	0 (0.0)		0.204
Serious injury, harm, or death you caused	93 (100.0)	20 (21.5)		73 (78.5)	0 (0.0)		2.215
Other	76 (81.7)	47 (50.5)		24 (25.8)	5 (5.4)		2.086
Total		132		173	26		8.258



Table 5. Trauma exposure – male offenders ( $n=48$ ).

Event	Any exposure, $n$ (%)	Multiple exposures,		Single exposure, $n$ (%)	Probable exposure, $n$ (%)	Average trauma score
Natural disaster	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0.000
Fire or explosion	2 (4.2)	0 (0.0)	2 (4.2)	2 (4.2)	0 (0.0)	0.083
Transportation accident	4 (8.3)	0 (0.0)	4 (8.3)	4 (8.3)	0 (0.0)	0.167
Serious accident	3 (6.3)	0 (0.0)	1 (2.1)	1 (2.1)	2 (4.2)	0.083
Toxic substance	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0.000
Physical assault	15 (31.3)	11 (22.9)	3 (6.3)	3 (6.3)	1 (2.1)	0.833
Assault with a weapon	6 (12.5)	1 (2.1)	3 (6.3)	2 (4.2)	2 (4.2)	0.229
Sexual assault	6 (12.5)	4 (8.3)	2 (4.2)	0 (0.0)	0 (0.0)	0.333
Other sexual	1 (2.1)	1 (2.1)	0 (0.0)	0 (0.0)	0 (0.0)	0.063
Combat or exposure to a war-zone	5 (10.4)	1 (2.1)	3 (6.3)	3 (6.3)	1 (2.1)	0.208
Captivity	1 (2.1)	0 (0.0)	1 (2.1)	1 (2.1)	0 (0.0)	0.042
Life-threatening illness or injury	7 (14.6)	1 (2.1)	4 (8.3)	2 (4.2)	2 (4.2)	0.271
Severe human suffering	2 (4.2)	0 (0.0)	2 (4.2)	2 (4.2)	0 (0.0)	0.083
Sudden violent death	4 (8.3)	0 (0.0)	4 (8.3)	4 (8.3)	0 (0.0)	0.167
Sudden accidental death	4 (8.3)	0 (0.0)	4 (8.3)	4 (8.3)	0 (0.0)	0.167
Serious injury, harm, or death you caused	48 (100.0)	15 (31.3)	33 (68.8)	33 (68.8)	0 (0.0)	2.313
Other	36 (75.0)	21 (43.8)	13 (27.1)	13 (27.1)	2 (4.2)	1.896
Total		55	79	79	10	6.938

Table 6. Trauma exposure – female offenders ( $n = 45$ ).

Event	Multiple exposures,			Probable exposure, <i>n</i> (%)	Average trauma score
	Any exposure, <i>n</i> (%)	<i>n</i> (%)	Single exposure, <i>n</i> (%)		
Natural disaster	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0.000
Fire or explosion	1 (2.2)	0 (0.0)	0 (0.0)	1 (2.2)	0.022
Transportation accident	4 (8.9)	0 (0.0)	4 (8.9)	0 (0.0)	0.178
Serious accident	1 (2.2)	0 (0.0)	1 (2.2)	0 (0.0)	0.044
Toxic substance	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0.000
Physical assault	32 (71.1)	26 (57.8)	3 (6.7)	3 (6.7)	1.933
Assault with a weapon	8 (17.8)	2 (2.2)	6 (13.3)	0 (0.0)	0.400
Sexual assault	24 (53.3)	14 (31.1)	9 (20.0)	1 (2.2)	1.356
Other sexual	7 (15.6)	1 (2.2)	4 (8.9)	2 (2.2)	0.289
Combat or exposure to a war-zone	2 (2.2)	0 (0.0)	2 (2.2)	0 (0.0)	0.089
Captivity	4 (8.9)	0 (0.0)	3 (6.7)	1 (2.2)	0.156
Life-threatening illness or injury	6 (13.3)	0 (0.0)	1 (2.2)	5 (11.1)	0.156
Severe human suffering	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0.000
Sudden violent death	8 (17.8)	2 (2.2)	6 (13.3)	0 (0.0)	0.400
Sudden accidental death	5 (11.1)	1 (2.2)	4 (8.9)	0 (0.0)	0.244
Serious injury, harm, or death you caused	45 (100.0)	5 (11.1)	40 (88.9)	0 (0.0)	2.111
Other	40 (88.9)	26 (57.8)	11	3 (6.7)	2.289
Total		77	94	16	9.667

Table 7. Characteristics of immigrant offenders ( $n = 23$ ).

Characteristic	$n$ (%)
Country of origin	
China	3 (13.0)
Fiji	1 (4.3)
Holland	1 (4.3)
India	4 (17.4)
Lebanon	1 (4.3)
Malta	1 (4.3)
Mauritius	2 (8.7)
New Zealand	1 (4.3)
Papua New Guinea	1 (4.3)
Sudan	4 (17.4)
Vietnam	4 (17.4)
Refugee or asylum seeker	8 (34.8)
Refugee camp	6 (26.1)
Detention centre	1 (4.3)

Table 8. Statistical analysis.

	$t$	$df$	$p$
Average trauma scores	3.570	91	.001
Trauma recognition scores	0.723	91	.471

were subjected to multiple exposures compared to the men (73.33%). Sexual assault was described for 12.5% of the men ( $n = 6$ ) compared to over half of the women ( $n = 24$ ), with average trauma scores over four times greater for the women. Multiple exposures to sexual assault affected two thirds of the 6 men and just under 60% of the 24 women.

Regarding Item 17 (*Any other very stressful event or experience*), the most common other stressful events for the male offenders ( $n = 48$ ) are: immigration (29%), with five men (10%) described as having lived in refugee camps or Australian detention centres (see Table 7); childhood separation from a father (17%); and separation from their own child or children (12.5%). Amongst the female offenders ( $n = 45$ ), the most commonly described events are: separation from their own child or loss of custody (27%); immigration (16%); and the death of a close relative due to unspecified causes (13%). The causes

of trauma for Item 17 are more diverse for the women, with 39 different items described compared to 29 different items for the men.

The results of the independent  $t$ -tests indicate significant gender differences across trauma exposure,  $t(91) = 3.57$ ,  $p = .001$ . The female offenders have significantly higher average trauma scores ( $M = 9.67$ ,  $SD = 3.78$ ) compared to the male offenders ( $M = 6.94$ ,  $SD = 3.59$ ). In particular, exposure to physical assault is significantly higher among the female offenders when compared to the male offenders (64% versus 29%,  $\chi^2 = 11.63$ ,  $p = .001$ ). Similarly, exposure to sexual assault is significantly higher among the female offenders when compared to the males (79% versus 21%,  $\chi^2 = 16.14$ ,  $p < .001$ ; see Table 8).

### Recognition of trauma

The findings regarding recognition of the described trauma items are presented in

Table 9. Recognition of trauma – all offenders (*n* = 93).

Event	Trauma recognised, <i>n</i> (% exposed)	Total recognition score	Average recognition score	Percentage recognition
Natural disaster	n/a	0	0.00	n/a
Fire or explosion	1 (33.33)	1	0.33	16.67
Transportation accident	0 (0.00)	0	0.00	0.00
Serious accident	0 (0.00)	0	0.00	0.00
Toxic substance	n/a	0	0.00	n/a
Physical assault	6 (12.77)	10	0.21	10.64
Assault with a weapon	2 (14.29)	3	0.21	10.71
Sexual assault	11 (36.67)	17	0.57	28.33
Other sexual	1 (12.50)	1	0.25	6.25
Combat or exposure to a war-zone	2 (28.57)	3	0.43	21.43
Captivity	1 (20.00)	2	0.40	20.00
Life-threatening illness or injury	0 (0.00)	0	0.00	0.00
Severe human suffering	1 (50.00)	2	1.00	50
Sudden violent death	4 (33.33)	7	0.58	29.17
Sudden accidental death	1 (11.11)	2	0.22	11.11
Serious injury, harm, or death you caused	5 (5.38)	8	0.09	4.30
Other	6 (7.89)	8	0.11	5.26
Total	20 (21.51)	64	0.69	12.81

**Table 9.** Exposure to trauma was recognised in 21% of the offenders ( $n = 20$ ). Trauma related to physical assault was recognised in 12% of the exposed offenders ( $n = 6$ ), with a percentage recognition of 10%; however, described sexual assault was recognised as traumatic for about one third of those exposed ( $n = 11$ ), with a percentage recognition of 28%.

The findings regarding the recognition of the described trauma items by gender are presented in [Tables 10](#) and [11](#). The average recognition scores for physical assault are similar for both genders. However, although sexual assault was recognised in almost one third of the women's cases, the average recognition scores are over twice as high for the men, owing to small numbers. The percentage recognition of other unwanted sexual experiences is 7.1% for the women.

There are no significant differences in the recognition of trauma between the male and female offenders,  $t(91) = 0.723, p > .05$ .

### ***Impact of trauma on sentencing decisions***

Excluding the offenders for whom perpetration of violence (as per Item 16) was the only exposure ( $n = 7$ ), trauma had an impact on sentencing in 47% ( $n = 40$ ) of the remaining 86 cases. Where trauma was recognised ( $n = 15$ ), exposure had an impact in 80% of cases ( $n = 12$ ) that was mitigating in 50% of them ( $n = 6$ ). Where trauma was not recognised ( $n = 71$ ), exposure had an impact in just 39% of cases ( $n = 28$ ) that was mitigating in 61% of them ( $n = 17$ ). The overall impact of exposure on sentencing was mitigating in 70% ( $n = 28$ ) of the 40 cases in which trauma (recognised or unrecognised) had an impact. For 2 offenders, the effect of exposure to trauma was aggravating because it was identified as a factor reducing amenability to rehabilitation ([Table 12](#)).

Exposure to trauma impacted the sentencing in 100% ( $n = 8$ ) of the cases where it was recognised in women and 57% ( $n = 4$ ) of the cases where it was recognised in men ( $n = 7$ ). In those cases, it had a mitigating impact for

63% of the women and 50% of the men. When exposure to trauma was described but not explicitly recognised, it impacted sentencing outcomes for 57% of the women and just 20% of the men. In 19% ( $n = 4$ ) of the cases of women for whom exposure was not recognised, trauma influenced sentencing in another way; this was usually related to the impact of separation from children during imprisonment ([Tables 13](#) and [14](#)).

Of the entire group, 2 offenders received life sentences and 3 offenders received non-custodial sentences. The average sentence length for the remaining offenders ( $n = 88$ ) was 13.57 years, with an average non-parole period of 70%. One of the non-custodial sentences was for infanticide. The second case of infanticide also included murder charges, so is included within the murder group. The group of offenders with no trauma history ( $n = 7$ ) were exclusively male, and all but one offender was convicted of manslaughter ([Table 15](#)).

Compared to the average sentence length of the male offenders ( $M = 15.29, SD = 7.58$ ), the female offenders received significantly shorter terms of imprisonment ( $M = 12.18, SD = 7.29, U = 673.5, p = .022$ ). Similarly, the average minimum non-parole terms between the male and female offenders is significantly different (66.12% versus 73.33%,  $U = 553.5, p = .008$ ; see [Table 16](#)).

### ***Trauma-informed recommendations***

Of the full sample ( $n = 93$ ), interventions to specifically address trauma were recommended for 6 offenders (6.5%) and non-specific recommendations which might address trauma were made for an additional 11 offenders (11.8%). A total of 8 of these offenders (47%) were diagnosed with PTSD, which accounts for 44% of the total PTSD-diagnosed sample. The average trauma score for offenders for whom recommendations (specific and non-specific) were made is 11.71, compared to 8.26 for all offenders ( $n = 93$ ) and 7.67 for offenders for whom no

Table 10. Recognition of trauma – male offenders ( $n = 48$ ).

Event	Trauma recognised, $n$ (% exposed)	Total recognition score	Average recognition score	Percentage recognition
Natural disaster	n/a	0	0.00	n/a
Fire or explosion	1 (50.00)	1	0.50	25.00
Transportation accident	0 (0.00)	0	0.00	0.00
Serious accident	0 (0.00)	0	0.00	0.00
Toxic substance	n/a	0	0.00	n/a
Physical assault	2 (13.33)	3	0.20	10.00
Assault with a weapon	1 (16.67)	2	0.33	16.67
Sexual assault	4 (66.67)	6	1.00	50.00
Other sexual	0 (0.00)	0	0.00	0.00
Combat or exposure to a war-zone	1 (20.00)	2	0.40	20.00
Captivity	1 (100.00)	2	2.00	100.00
Life-threatening illness or injury	0 (0.00)	0	0.00	0.00
Severe human suffering	1 (50.00)	2	1.00	50.00
Sudden violent death	2 (50.00)	4	1.00	50.00
Sudden accidental death	0 (0.00)	0	0.00	0.00
Serious injury, harm, or death you caused	0 (0.00)	0	0.00	0.00
Other	3 (8.33)	5	0.14	6.94
Total	7 (14.58)	27	0.56	21.91

Table 11. Recognition of trauma – female offenders ( $n=45$ ).

Event	Trauma recognised, $n$ (% exposed)	Total recognition score	Average recognition score	Percentage recognition
Natural disaster	n/a	0	0.00	n/a
Fire or explosion	0 (0.00)	0	0.00	0.00
Transportation accident	0 (0.00)	0	0.00	0.00
Serious accident	0 (0.00)	0	0.00	0.00
Toxic substance	n/a	0	0.00	n/a
Physical assault	4 (12.50)	7	0.22	10.94
Assault with a weapon	1 (12.50)	1	0.13	6.25
Sexual assault	7 (29.17)	11	0.46	22.92
Other sexual	1 (14.29)	1	0.14	7.14
Combat or exposure to a war-zone	1 (50.00)	1	0.50	25.00
Captivity	0 (0.00)	0	0.00	0.00
Life-threatening illness or injury	0 (0.00)	0	0.00	0.00
Severe human suffering	n/a	0	0.00	n/a
Sudden violent death	2 (25.00)	3	0.38	18.75
Sudden accidental death	1 (20.00)	2	0.40	20.00
Serious injury, harm, or death you caused	5 (11.11)	8	0.18	8.89
Other	3 (7.50)	3	0.08	3.75
Total	13 (28.89)	37	0.82	8.83



Table 12. Sentencing outcomes for traumatised offenders (excluding Item 16) – all offenders ( $n = 86$ ).

Impact	Trauma recognised, $n = 15$	Trauma not recognised, $n = 71$
No impact on sentencing decision	3	43
Sentencing decision impacted	12	28
Mitigating	6	17
Explanatory	3	4
Influential in some other way	0	1
Aggravating	0	0
Mitigating + Influential	1	2
Mitigating + Explanatory	0	2
Explanatory + Influential	1	1
Aggravating + Influential	0	1
Aggravating + Explanatory	1	0

Table 13. Sentencing outcomes for traumatised offenders (excluding Item 16) – male offenders ( $n = 41$ ).

Impact	Trauma recognised, $n = 7$	Trauma not recognised, $n = 34$
No impact on sentencing decision	3	27
Sentencing decision impacted	4	7
Mitigating	2	4
Explanatory	1	2
Influential in some other way	0	1
Aggravating	0	0
Mitigating + Influential	0	0
Mitigating + Explanatory	0	0
Explanatory + Influential	0	0
Aggravating + Influential	0	0
Aggravating + Explanatory	1	0

trauma-related recommendations were made ( $n = 76$ ). The average trauma recognition score for the group for whom recommendations were made is 1.41, compared to 0.69 overall and 0.67 for those with no trauma-related recommendations.

Only 2 of the 6 offenders for whom recommendations specific to trauma were made were women – 1 offender with a PTSD diagnosis and 1 offender without. Of the 17 offenders for whom any recommendation was made which might address trauma, 11 (65%) were female. Half of the men who received

recommendations ( $n = 3$ ) had trauma which was recognised, compared to only 18% of the women ( $n = 2$ ).

## Discussion

### *Trauma exposure and recognition*

Most of the offenders in the sample had been exposed to trauma, even when perpetration of violence is excluded. The women had been significantly more exposed than the men, with significant differences observed for the most

Table 14. Sentencing outcomes for traumatised offenders (excluding Item 16) – female offenders (*n* = 45).

Impact	Trauma recognised, <i>n</i> = 8	Trauma not recognised, <i>n</i> = 37
No impact on sentencing decision	0	16
Sentencing decision impacted	8	21
Mitigating	4	13
Explanatory	2	2
Influential in some other way	0	0
Aggravating	0	0
Mitigating + Influential	1	2
Mitigating + Explanatory	0	2
Explanatory + Influential	1	1
Aggravating + Influential	0	1
Aggravating + Explanatory	0	0

Table 15. Average sentence length/non-parole periods – all traumatised offenders (*n* = 86).

Sentence variable	Trauma recognised, <i>n</i> = 15	Trauma not recognised, <i>n</i> = 66*	All, <i>n</i> = 81*
Total average sentence	14.50	13.62	13.78
Murder	21.36	21.70	21.63
Manslaughter	8.33	7.39	7.53
Defensive homicide	9.00	11.50	10.88
Non-parole (%)	72.50	69.00	69.70
Murder	78.60	77.60	77.80
Manslaughter	67.62	62.06	62.91
Defensive homicide	66.30	68.80	68.50

Note. \*Excludes life (*n* = 2) and non-custodial (*n* = 3) sentences.

commonly described types of trauma overall, namely physical and sexual assault.

Establishing whether or not the described rates of trauma are consistent with the known rates of traumatisation in offenders is difficult, owing to the heterogeneity of pre-existing data and differing criteria. The current findings presented in the context of some of the available research is available in the [supplementary material](#).

The current findings report *described*, rather than *actual*, rates of trauma exposure, so other reasons besides greater trauma exposure in females (Vitopoulos et al., 2019) might account for the observed gender differences. Gendered pathways theory suggests that

women’s trajectories into offending fundamentally differ from men’s in that female offending is founded on survival behaviours developed to cope with traumatic experiences (Bartlett et al., 2015; Johansson & Kempf-Leonard, 2009; Jones et al., 2014). Thus, strategies such as substance use to attenuate distress or violence to mitigate against vulnerability, though ultimately unhelpful, are believed to originate in adaptive behaviour. The extant literature has also identified that criminality is more likely to be pathologised for female offenders who fail to uphold gender role conformity (Albonetti, 1991). To this end, psychological ‘reasons’ for offending are more often sought in women, as observed through

Table 16. Average sentence length/non-parole periods by gender.

Sentence variable	Male		Female	
	Trauma recognised, (n = 7)	Trauma not recognised, (n = 33**)	Trauma recognised, (n = 8)	Trauma not recognised, (n = 33*)
Total average sentence	15.93	15.32	13.25	11.92
Murder	21.63	23.00	21.00	20.31
Manslaughter	8.33	8.90	8.33	6.13
Defensive homicide	-	9.50	9.00	9.50
Non-parole (%)	74.40	73.10	70.90	65.00
Murder	79.20	78.50	77.80	76.70
Manslaughter	68.00	68.50	67.20	56.70
Defensive homicide	-	71.70	66.30	63.10

Note. \*Excludes life (n = 1) and non-custodial (n = 3) sentences; \*\*Excludes life sentences (n = 1).

more frequent requests for medical or psychiatric reports (Goethals et al., 1997). Accounts of trauma may be heuristically sought to confirm intuitive assumptions – i.e. that female offenders are weaker and less dangerous – and facilitate more palatable sentencing decisions. In contrast, the traditional antisocial pathways via which men enter into criminality describes inadequate parental supervision as a key factor, suggesting that examination of trauma associated with neglect – not covered in the LEC-5 – might reveal gender-specific themes (Widom & Wilson, 2015). In the current study, separation from parents (included within Item 17: *Any other very stressful event or experience*) affected one third of the offenders and almost half of the males.

Immigration was described for 25% (n = 23) of the offenders (29% of the men), consistent with recent statistics describing Victoria as the state with the highest proportion of overseas-born prisoners (25%; see Australian Bureau of Statistics, 2016). The traumatic impacts of immigration – especially for refugees and asylum seekers – are well established, and recent Australian studies have suggested that culturally specific therapeutic interventions are needed (Atkinson, 2019; Ogloff et al., 2017; Shepherd, 2016).

Over one quarter of the female offenders had been separated from their children, which from arrest to reunion has been described as a traumatic experience (Benjamin, 1990). Particularly in Australia, where intergenerational trauma remains prominent – not least amongst the 34% of female prisoners who are Aboriginal (Australian Law Reform Commission, 2018) – this finding raises complex issues regarding judicial decisions about offenders with children and the need for trauma-informed services that are focused on this group (Atkinson, 2019).

Where exposure was described, trauma was only explicitly recognised (fully or partially) in one fifth of the sample. For the major trauma items, percentage recognition was only 10% for physical assault and assault with a weapon, and 23% for sexual assault. The recognition of traumatisation was similar for both genders regarding physical trauma, whereas sexual trauma was more frequently recognised in the men, although the numbers are too low to make statistical inferences. No pre-existing research could be identified for comparison. Perhaps the simplest reason for this observation is the assumption that the more conspicuous an injury is, the less necessary it seems to be to explicitly acknowledge it. Certainly, many of the sentencing transcripts contain

sympathetic phraseology synonymous with trauma. Trauma-informed ideology, however, emphasises the importance of naming trauma in order to link past traumatic events and difficulties with offending (Courtois & Ford, 2012). Traumatisation, although not an accepted criminogenic need, appears to potentiate criminogenic needs in the domains of family, personality/behaviour and substance abuse (Andrews et al., 2006; Vitopoulos et al., 2019). Furthermore, low recognition by offenders of the salience of trauma may impact their conceptualisation of their behaviour, reducing accountability and impetus for reform.

### *Impact of trauma on sentencing*

A modifying impact of trauma on sentencing is more evident in the group for whom trauma was recognised ( $n = 17$ ) than for the group for whom it was not ( $n = 71$ ). Where trauma impacted sentencing – for both the recognised and unrecognised groups – its impact was mitigating in about half of the cases, with no marked gender differences. Statistical inferences about the impact of trauma recognition cannot be made due to the small numbers recognised and the disparate sizes of the groups. Consistent with prior findings (Gelb, 2010), the average sentence was shorter for the women than for the men.

Traumatic history was identified as an impediment to rehabilitation in two cases, although for one of these a trauma-informed recommendation was made (i.e. a longer sentence was given to maximise access to treatment). Traumatic history as a static risk factor for offending has recently been observed in *DPP v. Walsh* (2018), where the judge stated that the offender's 'own experiences of abuse "primed" him for becoming a perpetrator' (para. 27); although the connection between offending and his abuse history was accepted, moral culpability was not reduced.

Litton (2005) in his exploration of abuse as a mitigating factor in capital cases argued: 'it is more difficult to justify the harshest

criminal sentence for a defendant whose childhood abuse interfered with a minimally decent moral education in comparison with others who were provided that safeguard' (p. 1033). Under Australian law, a court must, however, accept that abuse occurred and establish a relationship with the current offending that diminishes the offender's culpability (e.g. *Bugmy v. R*, 2013; *DPP v. B W*, 2007; Freiberg, 2014; *R v. AWF*, 2000). Most of the extant literature addresses PTSD – not traumatic experiences – in the context of mitigation, and the perception of PTSD as a 'distortion aimed at avoidance of criminal punishment' (Sparr, 1996, p. 405) may still impede the acknowledgement of trauma and the provision of appropriate trauma-informed interventions. Trauma-informed sentencing, however, does not cite leniency as a desired outcome; judicial leniency may even be counter-therapeutic at times, especially for female offenders, owing to the limited opportunities for rehabilitation during shorter sentences (Halliday et al., 2001).

The factors linking trauma and mitigation are complicated. The first group of applicable cases involves the deaths by homicide of perpetrators of domestic violence. In these cases, as for *DPP v. Parker* (2016), offenders' traumatic experiences were observed to lead to reduced moral culpability through an 'objectively reasonable response to the circumstances as the person perceives them' (para. 14). The second group comprises traumatised offenders with coexisting borderline personality disorder, which occurs at high rates in offenders and is causally linked to trauma (Langer, 2016). Although personality disorder has largely been regarded as exclusive of the application of the six *Verdins* principles moderating sentencing (*R v. Verdins, Buckley and Vo*, 2007), it has been accepted as diminishing moral culpability in some cases, such as *DPP v. O'Neill* (2015), whereby the Victorian Supreme Court of Appeal recognised that – although not meeting the criteria for the application of *Verdins* – the offender's 'fragile psychological state and complex profile were the

product of the unusual and difficult nature of his background and circumstances. His condition bore, in a limited way, upon the seriousness with which his conduct should be viewed' (para. 100).

In one sampled case from the current study, *DPP v. O'Neill* was cited in the context of explanation, reducing the seriousness of the offence in the absence of diminished moral culpability. In a more recent case, however, *DPP v. Herrmann* (2019), the Court acknowledged that although the specific features of personality disorder addressed in *DPP v. O'Neill* failed to enable application of *Verdins* principles (*R v. Verdins, Buckley and Vo*, 2007), this was not to say that *Verdins* can never be applied with respect to personality disorder; that is, the clinical features of various personality disorders may impair the offender's perception of the world in a manner that thwarts their ability to understand the nature and wrongfulness of their behaviour. The Court thus found that *Verdins* principles applied 'to some extent' (para. 82); however, such application of the principles needed to be distinct from sequelae of early life trauma, as in *Bugmy v. R*, in which the focus of mitigating factors was on early abuse rather than on any personality pathology founded on these experiences. Furthermore, given the typically enduring – but not untreatable – nature of personality disorder, the principle of community protection was a counter-consideration to any mitigating influence of personality.

Trauma-specific recommendations were only made for six offenders. Based on observations of average trauma scores and average recognition scores that are higher in these offenders compared to the whole sample, the description and recognition of trauma may have had an influence on these recommendations being made. Gender does not appear to have impacted the likelihood of trauma-specific recommendations being made in the very small number of instances observed. Unfortunately, the judicial recommendations – which included counselling, education,

programmes and referral to prison mental health services – were consistently vague and non-evidence-based. One case attributed therapeutic value to incarceration to 'help you break the cycle of drug abuse and domestic violence'. Psychological treatment, counselling and the utilisation of parole services – as a surrogate 'mature influence' for those whose early life supervision was disrupted by abuse or other adversity – were included as non-specific recommendations to address trauma.

The treatment of trauma is not addressed by the current study; however, the relative absence of recommendations to address trauma is concerning given that trauma-informed approaches have been associated with improved safety in custodial settings (Ford & Hawke, 2012; Miller & Najavits, 2012), improved responsivity to correctional rehabilitation (Ardino et al., 2013) and mental health interventions (Holmes, 1995) and improvements in the health and welfare of corrections employees (Miller & Najavits, 2012). However, this likely reflects as much on the recommendations contained in expert evidence to the courts as it does on the judicial recognition of trauma in disposition.

### Limitations

The small numbers permitted only limited inferential analysis. Cases subjected to suppression orders, and thus not reported on AustLII, and cases found not guilty by reason of mental impairment were excluded. As these groups may represent offenders with significant trauma exposure, their exclusion may have led to an under-representation of trauma in the sample.

The descriptions of trauma were usually brief and rarely included verifying information, so the subjective degree of traumatisation could not be determined. Care was taken to avoid recording implied trauma without a specific description of exposure, but further confirmation of interrater reliability would reduce bias. The instances of trauma logged for Item

17 (*Any other very stressful event or experience*) were subject to interpretation of the salience with which the information was presented in the transcripts. The timing of the trauma and PTSD diagnosis was often not stated but, as the findings are focused on prospective sentencing outcomes, this is not highly relevant. Designed as a screening tool, the LEC-5 includes a broad range of traumatic experiences but – unlike measures such as the Adverse Childhood Experiences International Questionnaire (ACE-IQ; World Health Organization, 2018) – omit neglect, disrupted attachment and emotional abuse, all of which are known to be significant in the development of trauma-related pathology (Fitton et al., 2020; Fonagy, 2008). Information about the age of exposure and whether the trauma was directly or indirectly experienced was omitted to reduce the number of variables for such a small sample; however, this limited comparability to other studies.

Heterogeneity of the offences and offenders limited the interpretation of quantitative sentencing outcomes (i.e. sentence length). Measurement of the factors influencing sentencing was challenging, owing to judicial intuitive synthesis, whereby the quantifiable impact of any single factor is not always clear. Other mitigating factors were not recorded, so the influence of trauma could not be independently established. For a larger sample, demographic information such as age, socioeconomic status and prior convictions would have allowed better specificity for trauma as a determining variable. Information about the relationship to the victim would have allowed further interpretation of how the courts address trauma in cases of family violence.

### Conclusion & recommendations

This pilot study has established that rates of trauma described at the point of sentencing for perpetrators of homicide in Victoria are high, and that female offenders are more exposed than male offenders. The explicit recognition

of trauma in sentencing remarks was confirmed to be uncommon but, owing to the small number of cases in which trauma was recognised, the impact could not be ascertained and significant gender differences could not be established. Similarly, given the extremely low rate of trauma-informed recommendations being made, the impact of trauma recognition – either through description or explicit recognition – could not be established. Within the descriptive analysis, the findings show that trauma may have had an impact on sentencing outcomes but that PTSD, rather than exposure to traumatic experiences, may be disproportionately influential.

Further research, judicial education and collaboration with legal agencies is required to justify and promote diligence in seeking information about trauma and sourcing recommendations for evidence-based interventions. The recognition of the importance of trauma might lead to the development of judicial guidelines that take account of trauma for the purposes of advising juries and informing sentencing. The development of resilience and strengths-based approaches, applicable to all offenders, in justice settings would need to be resourced in order to complement these court-based practices (Gohara, 2018; Kezelman & Stavropoulos, 2016; Randall & Haskell, 2013).

The role of psychiatrists in this process, in keeping with 11th Principle of the Royal Australian and New Zealand College of Psychiatrists (2018) *Code of Ethics*, is ‘to promote justice for all mental health patients through the fair distribution of mental health resources’ (p. 20). This includes but is not limited to: explicitly recognising trauma and recommending evidence-based management; working with lawyers and judges to enhance our understanding of trauma, its relationship to offending and trauma-informed interventions; advocating for improved resources to address trauma in prisons and community forensic services; and upholding principles of trauma-informed care across all relevant settings to promote recovery and prevention.

Future proposed areas for study include the development of this pilot study with a larger sample, more detailed accounts of exposure to trauma, demographic information and a focus on the types of trauma most prevalent in offenders (i.e. physical and sexual trauma). Examination of the impact of intergenerational trauma on sentencing is particularly relevant, given both the proportion of Aboriginal Australians in the criminal justice system and their immense history of trauma since the colonisation of Australia, in common with other dispossessed First Nations people around the world. Examining judicial information alongside psychological and psychiatric court opinions would help to establish whether or not clinicians are explicitly identifying trauma and making evidence-based recommendations, and how these recommendations are being responded to. Qualitative study of trauma in offenders – for example, through the use of the ACE-IQ (World Health Organization, 2018) – would also be a helpful addition for understanding the degree of need and improving the management of resources. A number of areas for study to develop cultural- and trauma-informed management in Victorian justice settings could be approached through benchmarking comparable systems and auditing current practice.

### Disclosure statement

### Declaration of conflicts of interest

Victoria Jackson has declared no conflicts of interest.

Danny H. Sullivan has declared no conflicts of interest.

Daveena Mawren has declared no conflicts of interest.

Arie Freiberg has declared no conflicts of interest.

Jayashri Kulkarni has declared no conflicts of interest.

Rajan Darjee has declared no conflicts of interest.

### Ethical approval

This article does not contain any studies with human participants or animals performed by any of the authors.

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